



INTERIOR BOARD OF INDIAN APPEALS

Nick Winters v. Acting Northwest Regional Director, Bureau of Indian Affairs

43 IBIA 219 (08/08/2006)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
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ARLINGTON, VA 22203

NICK WINTERS,	:	Order Vacating Decision
Appellant,	:	and Remanding
	:	
v.	:	
	:	
ACTING NORTHWEST REGIONAL	:	Docket No. IBIA 06-78-A
DIRECTOR, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee.	:	August 8, 2006

On June 29, 2006, the Board of Indian Appeals (Board) received a notice of appeal from Nick Winters (Appellant), pro se, seeking review of a May 23, 2006 decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA). The Regional Director affirmed a February 6, 2006 decision of the Acting Yakama Agency Superintendent (Superintendent) to cancel Appellant's Lease (Grazing Permit) No. 1-2-0677-0206, covering Yakama Allotment No. 975, for non-payment of annual rental.

On July 20, 2006, the Board received from Appellant a copy of a June 30, 2006 letter to him from the Superintendent stating that "[t]his letter is official action rescinding the [February 6, 2006] notice of Lease Cancellation" for Lease No. 1-2-0677-0206. 1/

It is well-established that once an appeal is filed with the Board, BIA loses jurisdiction over the matter, except to participate as a party. See Burlington Northern Railroad Co. v. Acting Billings Area Director, 31 IBIA 180, 180-81 (1997). The Board acquired jurisdiction over the present appeal on June 26, 2006, the date of the postmark of Appellant's notice of appeal. See 43 C.F.R. § 4.310(a) (date of mailing is date of filing).

As such, although it was clear that the Superintendent wished to rescind the lease cancellation, neither he nor the Regional Director had jurisdiction over the matter when the Superintendent issued his June 30, 2006 letter. Therefore, the Board requested a position statement from the Regional Director on whether he agreed with the Superintendent that

1/ Appellant's notice of appeal had included a copy of a cancelled check dated February 28, 2006, from him to BIA, which may have prompted the Superintendent's letter.

the lease cancellation decision should be rescinded. On August 3, 2006, the Board received a letter from the Regional Director stating that he supports the Superintendent's June 30, 2006 letter and requesting that the Board vacate the May 23, 2006 decision and remand the matter.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board vacates the Regional Director's May 23, 2006 decision and remands the matter to him.

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Amy B. Sosin
Acting Administrative Judge